IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1626 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUO MOTU FOR JAYANTILAL A GANDHI

Versus

STATE OF GUJARAT

Appearance:

SUO MOTU for Petitioners

MR SAMIR DAVE for Respondent No. 1

MR SANJAY M AMIN for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/04/2001

ORAL JUDGEMENT

#. The amount of provident fund, together with interest thereon @ 12% p.a. has been paid to these persons. Some of these persons are present in-person and they admit this factual position. For delayed payment of amount of provident fund to these persons, interest has been awarded to them by respondents @ 12% p.a. It is not in dispute that this delay in payment of this amount of provident fund to these persons is not attributable to them. So the delay in payment of amount of provident fund is caused by respondents and for which they are

liable to pay interest on this amount to them. The question which falls for consideration is at what rate interest has to be paid on this delayed amount of provident fund to these persons. Recently, their Lordships of Hon'ble Supreme Court in the case of Vijay L. Mehrotra v. State of U.P. reported in 2000 AIR SCW 2678 awarded simple interest @ 18% to an employee/ officer on delayed payment of amount of retirementary benefits. In view of this latest pronouncement of the Hon'ble Supreme Court, I am of the opinion that interest on delayed amount of provident fund has to be paid by respondents @ 18% p.a. The respondent No.4 is directed to calculate simple interest @ 18% p.a. on the amount of provident fund payable to these persons from the date of their retirement till the payment thereof. Different of the amount of interest calculated @ 18% p.a. and 12% p.a. is to be calculated and paid to these persons within a period of one month from the date of receipt of writ of this order.

#. Mr.Arvindbhai S. Shah, Chief Officer of respondent No.4-Nagarpalika has filed an affidavit today in the court. Therein, it is stated that Nagarpalika is regularly depositing the amount of provident fund in the bank on deduction from the salaries of the employees. A certificate has also been submitted along with this affidavit, re.: amount of provident fund deposited in the bank. I find therefrom that till date, the total amount of Rs.1,05,69,847=56 is lying deposit in the bank. There are general complaints against municipalities in the State that though the amount of provident fund is deducted from the salaries of the employees, it is not deposited in the bank. There are complaints also that this amount is being diverted for payment of bills etc. under different heads. On retirement of the employees, because of all these things, they are not getting the amount of provident fund in time. The amount of provident fund is the money of the employees and the status of the municipality is only of a Trustee. It has no right whatsoever to withdraw any amount from this provident fund account for use thereof for any other purpose except to make payment to the beneficiaries thereof. To avoid any future dispute or litigation, I consider it to be in the larger interest of employees that the municipality should be restrained from withdrawing any amount from this account without prior permission of the court. The respondent No.4 is restrained from withdrawing any amount from this account of provident fund without prior permission of the court. The respondent No.4 is further directed to deposit regularly the amount of provident fund deducted from the

salaries of the employees in the bank and it has to be reported to the court every month. For withdrawal of amount from the provident fund, the respondent No.4 is not required to file any separate special civil application or misc. civil application or civil application. It is free to file a simple note in these proceedings and the court will pass appropriate orders. This order becomes necessary so that in future this class of persons may not be subjected to harassment as well as unnecessary litigation may not come up before this court. The municipality is further restrained from making any temporary or daily wage or part time appointments without first taking prior permission of this court. This order is also necessary to be passed in order to avoid favouritism and nepotism in the appointments and to stop induction of employees exceeding the sanctioned strength as well as future litigation in the court in the form of claim for equal pay for equal work or regularization. If such a course is permitted, it will result in permanent appointment in services of the municipality which is a constitutional authority dehors the service rules as well as constitutional provisions. Subject to the directions aforesaid this special civil application and Rule stand disposed of. In view of this decision, the interim order passed earlier stands vacated. No order as to costs.

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(sunil)